

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-025-15-1-4-00487-17
45-025-16-1-4-00486-17
Petitioner: Liberty Savings Association
Respondent: Lake County Assessor
Parcel: 45-03-07-251-008.000-025
Assessment Years: 2015 and 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated its 2015 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on May 17, 2016 and its 2016 appeal on November 17, 2016. The PTABOA issued its determinations for both years on April 28, 2017. Petitioner timely filed its petitions with the Board on May 5, 2017.
2. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
3. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on December 4, 2017. Neither the ALJ nor the Board inspected the property.
4. Tax representative Timothy Parish testified for Petitioner. Lake County Hearing Officers Robert W. Metz and Gordona Bauhan testified for Respondent.

Facts

5. The subject property is a bank located at 1904-10 Indianapolis Boulevard in Whiting.
6. The assessed values are as follows:

Year	Land	Improvements	Total
2015	\$134,900	\$543,100	\$678,000
2016	\$134,900	\$560,600	\$695,500

7. Petitioner requested a total assessed value of \$450,000 for each of those years.

Record

8. The official record contains the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit 1:	Lee & Associates appraisal as of April 23, 2015,
Respondent Exhibit 1:	Property record card (“PRC”) for the subject property,
Respondent Exhibit 2:	Overhead GIS map of parcel,
Respondent Exhibit 3:	PRC for comparable land sale at 5720 Hohman Avenue in Hammond,
Respondent Exhibit 4:	PRC for comparable land sale at 6850 Indianapolis Boulevard in Hammond,
Respondent Exhibit 5:	PRC for comparable land sale at 922 Indianapolis Boulevard in Hammond,
Respondent Exhibit 6:	Land sale summary,
Respondent Exhibit 7:	Cost approach conclusion,
Respondent Exhibit 8:	PRC for comparable sale at 4715 Indianapolis Boulevard in East Chicago,
Respondent Exhibits 9:	PRC for comparable sale at 2090 E. Commercial in Lowell,
Respondent Exhibit 10:	Sales comparison approach summary,
Respondent Exhibit 11:	Reconciliation,
Respondent Exhibit 12:	Appraisal comments,
Board Exhibit A:	Form 131 petitions with attachments,
Board Exhibit B:	Notice of hearing,
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden

9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that the subject assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.

10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). Under Ind. Code § 6-1.1-15-17.2(b), “the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.”
11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
12. These provisions do not apply if the disputed assessment is based on structural improvements, zoning, or uses that were not considered in the assessment of the prior year. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value increased from \$655,600 in 2014 to \$678,000 in 2015. The increase is less than 5% and nothing in the record indicates that Petitioner prevailed in any appeal regarding its 2014 assessment. Therefore, Petitioner had the burden of proof for 2015. Assigning the burden for 2016 depends on the final determination for 2015 and will be discussed later in this determination.

Summary of Contentions

14. Petitioner’s case:
 - a. The subject property is a commercial bank that Petitioner contends is over-assessed. Petitioner submitted an appraisal prepared by James E. Lee, MAI, SRA. Mr. Lee is an Indiana certified general appraiser and the owner of Lee & Associates, Inc. *Parish testimony; Pet’r Ex. 1.*
 - b. Mr. Lee prepared an appraisal in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). In the appraisal, Mr. Lee developed both the cost approach and the sales comparison approach. Petitioner contends the appraiser used the best available comparable properties and made appropriate adjustments for age, condition, quality, site area, and the existence or non-existence of various other features. In light of these considerations, Mr. Lee arrived at an estimated value of \$450,000 as of April 23, 2015. *Parish testimony; Pet’r Ex. 1.*

- c. The effective date of the appraisal is less than two months after the 2015 valuation date and approximately nine months before the 2016 valuation date. Petitioner contends there was not much fluctuation in market value between 2015 and 2016. Therefore, Petitioner requests a value of \$450,000 for each year. *Parish testimony; Pet'r Ex. 1.*
 - d. Petitioner contends Respondent's comparable sale at 4715 Indianapolis Boulevard is a PNC bank located in a Strack and Van Til parking lot which, Petitioner claims, is a superior location situated in the center of a retail hub. On the other hand, Mr. Parish testified that the subject property has little parking and limited access, even though it is located on a main thoroughfare. According to Mr. Parish, the subject is a "different animal" compared to Respondent's comparable in the absence of major adjustments. And according to Mr. Parish, Respondent's comparable sale at 2090 East Commercial was originally a Security Federal Bank that was part of a portfolio transfer. *Parish testimony; Resp't Exs. 8 and 9.*
15. Respondent's case:
- a. According to Ms. Bauhan, the appraisal is "technically not a viable exhibit" for this appeal because it was prepared for Peoples Bank. *Bauhan testimony; Pet'r Ex. 1; Resp't Ex. 12.*
 - b. Ms. Bauhan offered several other criticisms of the appraisal. She testified that the appraiser is inconsistent. The appraiser stated under the "Supply and Demand" heading on page 4 that market conditions were "slowly improving." Ms. Bauhan said that based on her own CoStar residential and commercial research, those conditions were improving. But the appraiser used comparable sales from 2010 and 2012 in the sales comparison approach and did not make any adjustments for those improving conditions. *Bauhan testimony; Pet'r Ex. 1; Resp't Ex. 12.*
 - c. Ms. Bauhan testified that records indicate building permits were taken out for the subject property in August and September 2015—\$4,000 for roofing and \$136,000 for remodeling. She pointed out that the appraiser would not have been aware of those permits because they were issued after the appraisal date. Respondent acknowledged this point only applied to the 2016 assessment. *Bauhan testimony; Resp't Ex. 12.*
 - d. Ms. Bauhan was also critical of the appraiser's cost approach. Generally, she testified that the appraiser did not make sufficient adjustments for market conditions. According to her, the first sale the appraiser used in his land value calculation consists of a property zoned for industrial use, which is not consistent with the high-visibility location of the subject property. *Bauhan testimony; Pet'r Ex. 1.*

- e. Ms. Bauhan calculated a separate land value first by using the appraiser's sale #2 and sale #3 and applying a 10% adjustment to arrive at values of \$7.61 and \$3.23 per square foot. She located three additional land sales with adjusted values of \$16.69, \$11.42, and \$14.92 per square foot. Based on those sales, she concluded \$10.00 per square foot would be a reasonable land value, but she actually used \$8.00 per square foot to arrive at a land value of \$194,000. *Bauhan testimony; Resp't Exs. 3-6 & 12.*
- f. Ms. Bauhan disagreed with the appraiser's cost approach because he apparently used a depreciation rate of 75% based on actual age. The assessor's records indicate an effective age of 36 years, which results in a 53% depreciation rate. Compromising at 65% would result in a depreciated value of the improvements of \$511,150. That change, in conjunction with the adjusted land value discussed above, results in a rounded value of approximately \$725,000 under the cost approach. *Bauhan testimony; Resp't 7 & 12.*
- g. According to Ms. Bauhan, the appraiser's sales comparison approach also has flaws. Sale #1 was a sale of three parcels, two of which subsequently sold. Thus, she contends, the sale price was not for just a bank but also for two other income properties. While she finds no issue with Sale #2, she claims Sale #3 represents the sale of a ground lease rather than simply a bank building. She testified that these considerations should eliminate two of the appraiser's three sales. *Bauhan testimony; Pet'r Ex. 1.*
- h. Ms. Bauhan found two arm's-length sales of her own located at 4715 Indianapolis Boulevard in East Chicago and 2090 East Commercial in Lowell. She adjusted those sales using considerations similar to those in the appraisal and calculated values of \$154.29 and \$185.51 per square foot. She also changed the adjustments to sale #2 in the appraisal to get a revised value of \$151.67 per square foot. Using \$154 per square foot, Ms. Bauhan calculated a value of \$720,000 for the subject property for 2016. *Bauhan testimony; Resp't Exs. 8-10.*
- i. Taking that \$720,000 and deducting 5% for the market increase from 2015 to 2016, Ms. Bauhan determined the 2015 value was \$680,000. She pointed out that the disputed assessments are less than her value calculations. *Bauhan testimony; Resp't Ex. 11.*
- j. Ms. Bauhan did not make an adjustment for location to her property at 4715 Indianapolis Boulevard because she simply considered the traffic count. She was not aware that the property was an "outlot." As for Petitioner's point that 2090 East Commercial was part of a portfolio transfer, Ms. Bauhan would not argue that it was or was not. That said, she made every effort not to use portfolio sales and this sale did not come up as one when she was doing her research. *Bauhan testimony; Resp't Exs. 8 & 9.*

ANALYSIS

16. Based on the evidence and arguments presented, Petitioner made a case for changing the 2015 assessed value to \$450,000. According to the burden-shifting provisions in Ind. Code § 6-1.1-15-17.2(d) the Respondent had the burden of proving the 2016 assessed value is correct. The Respondent, however, failed to make a prima facie case that the 2016 assessed value of \$695,500 is correct. Therefore, that 2016 assessment must also be changed to \$450,000. The Board reached this decision for the following reasons:
- a. Real property is assessed based on its “true tax value”, which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
 - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2015 assessment at issue in this appeal was March 1, 2015. The valuation date and assessment date for 2016 was January 1, 2016. Ind. Code § 6-1.1-2-1.5.
 - c. Petitioner had the burden of proof for 2015. And accordingly it offered a USPAP compliant appraisal prepared by certified general appraiser James E. Lee, MAI, SRA.¹ Mr. Lee estimated the value of the subject property at \$450,000 as of April 23, 2015, a date two months after the March 1, 2015 valuation date and approximately

¹ Among other things, on page 50 the Certification states, “The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, which include the *Uniform Standards of Professional Appraisal Practice*.” Mr. Lee’s transmittal letter, dated April 29, 2015, provides a further explanation where on the third page it states, “This report was prepared under the “Appraisal Report” option of Standards Rule 2-2(a) of the 2014-2015 edition of USPAP. This new version of USPAP gives appraisers more flexibility to vary the level of information in an “Appraisal Report” depending on the intended use and intended users. Lee & Associates, Inc. developed this report based on previous reporting requirements for a Summary Appraisal, and this report meets or exceeds the former Summary Appraisal Report requirements that were contained in the prior edition of USPAP. This format contains a moderate level of detail. It summarizes the information analyzed, the methods employed, and the reasoning that supports our analyses, opinions, and conclusions.”

nine months before the January 1, 2016 valuation date. The Board has repeatedly found that appraisals with effective dates within a year of the relevant valuation date are sufficiently time-related. We do the same here.

- d. The Tax Court and the Board have stated numerous times that such an appraisal is often the most effective way to make a case. Here Petitioner established a prima facie case with the appraisal that the 2015 assessed value should be \$450,000. Once a Petitioner makes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach, a respondent has the same burden to present probative evidence that a petitioner faced to make a prima facie case. *Fidelity Fed. Sav. & Loan v. Jennings Co. Ass'r*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- e. Respondent attempted to impeach the appraisal in several ways. Respondent initially argued that the appraisal was not a viable exhibit for this appeal because it stated that it was for use only by Peoples Bank, its auditor, and any appropriate regulatory authorities. But Respondent provided no authority or substantial legal argument for why the appraisal was not credible, reliable valuation evidence that the Board can consider. The fact that the appraisal was undertaken for Peoples Bank rather than specifically for purposes of these appeals does not substantially diminish its probative value.
- f. Respondent generally questioned the appraiser's choice of comparable sales in both the land valuation component of the cost approach and in the sales comparison approach. But it is well within an appraiser's expertise to choose sales he or she deems most comparable and then apply adjustments to account for the differences between them. Conclusory statements (such as claiming the appraiser used invalid sales) are not sufficient to rebut or impeach. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005).
- g. Respondent disputed the lack of market conditions adjustments on the older comparable sales (from 2010 and 2012) considered in the appraisal. Respondent claimed making no adjustment is inconsistent because the appraisal (as of April 2015) states that market conditions were "slowly improving." Given the lack of evidence or argument, it is difficult to say whether the appraisal is somewhat inconsistent on this point. But one way or the other, Respondent failed to prove the lack of a market conditions adjustment had any significant impact on the appraisal's final opinion of value. Consequently, the point has little negative impact on the overall credibility of the appraisal. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining a party's duty to walk the Indiana Board through every element of analysis that makes evidence probative).

- h. Respondent argues that the appraiser's comparable land sale #1 in the cost approach is zoned industrial and is not comparable to the highly visible location of the subject property. However, the appraiser made a positive 20% adjustment to that comparable to account for the difference in location and visibility with the subject property. And Respondent failed to prove that adjustment was not a sufficient recognition of the location differences pointed out by Ms. Bauhan.
- i. Respondent attempted to rebut Petitioner's appraisal by offering alternative calculations for the cost approach and for the sales comparison approach, although Respondent failed to establish that any of the alternative calculations satisfy generally accepted standards of appraisal practice. Ultimately, neither of those attacks on the appraisal was effective.
- j. For the land value component of the cost approach, Ms. Bauhan used sales #2 and #3 from Petitioner's appraisal and included three additional land sales that she located. Ms. Bauhan adjusted the sale prices per square foot and calculated a range from \$3.23 to \$16.69. The median was \$11.42 and the average was \$10.77 per square foot. Ms. Bauhan concluded that \$10.00 per square foot was reasonable, but then she used \$8.00 per square foot to calculate a land value of \$194,000. (According to her, the lower price per square foot was used just for the taxpayer's benefit.) The record contains no meaningful comparison of the properties she used in calculating the land value. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of such properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* In this case, Respondent did not prove that the properties she selected were comparable to the subject property. Consequently, Ms. Bauhan's land value calculations do not convincingly prove that the land value of \$73,000 in Mr. Lee's appraisal is too low. Similarly, Ms. Bauhan attempted to dispute the amount of depreciation (75%) allowed in the appraisal. She testified that the effective age really should be 36 years, which would mean only 53% depreciation, however her conclusory statements on this point have no probative weight. Nor are we persuaded by her conclusory proposal to compromise on depreciation at 65%. We find no probative value in Ms. Bauhan's claim that under the cost approach the assessed value of the subject property should be \$725,000.
- k. For her sales comparison approach, Ms. Bauhan eliminated sale #1 and sale #3 in the appraisal because one was a sale of a bank with additional income properties and the other was the sale of a ground lease and not a building. She selected two other sales as comparable properties and made various adjustments. Again, Ms. Bauhan did not prove the properties she selected were comparable to the subject property nor did she substantiate the adjustments made. Therefore, her attempt to use the sales

comparison approach to prove the correct assessed value of the subject property also lacks probative value.

- l. In light of these considerations, Respondent failed to effectively rebut Petitioner's case for 2015. Petitioner is entitled to have the 2015 assessed value reduced to \$450,000.

- m. Because the 2015 value was reduced, subsection 17.2(d) of the burden-shifting statute would normally put the burden on Respondent to prove the 2016 assessment of \$695,500 is correct. Subsection 17.2(c), however, states that the burden-shifting provisions do not apply if the disputed assessment is based on structural improvements, zoning, or uses that were not considered in the assessment of the prior year. Respondent never mentioned the exception provided in subsection 17.2(c) and never made any argument that the assessor would not have the burden regarding the 2016 assessment. Nevertheless, Ms. Bauhan testified that "our records indicate that there were permits taken out for the subject for roofing in August of 2015 and remodeling in September ... 2015. The appraiser would not have known that since the appraisal was done in April 2015. *** Those improvements would have been done to the tune of some \$4,000 for roofing and \$136,000 for remodeling." Perhaps this bit of testimony was intended as an attempt to invoke the exception in subsection 17.2(c), but nothing like that actually was stated. Even if we consider whether the Petitioner has the burden of proof for 2016 because that assessment was based on structural improvements, zoning, or uses that were not considered in the 2015 assessment, we conclude that Respondent had the burden to prove the 2016 assessment is correct. The evidence in this case is not sufficient to support putting the burden on Petitioner for 2016. We reach this conclusion because Ms. Bauhan's testimony quoted above is the *only* thing in the record that might put subsection 17.2 (c) in play. The building permits are not in the record. The record does not establish exactly what was done or when it was done. If the 2016 assessment was based on structural improvements that were not considered with the 2015 assessment, Respondent failed to prove it.

- n. Ms. Bauhan offered the same arguments and evidence for 2016 that she offered for 2015. For the same reasons previously discussed, Respondent failed to prove that the 2016 assessment is correct. Consequently, the 2016 assessment also must be changed to \$450,000.

CONCLUSION

17. The Board finds the 2015 assessment should be reduced to \$450,000. Respondent had the burden of proof for 2016 and failed to prove the assessment was correct. Therefore, Board finds the 2016 assessment should be reduced to \$450,000.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2015 and 2016 assessed values should be changed.

ISSUED: April 4, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.